उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. M.P. No. 158/06 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPLICANT Smt. Chameli Sardar, 28 Yr. W/o Shri Chitranjan Sardar, C/o Shri Nani Gopal Vishwas, Main Road, Mana Camp, Teh. & Distt. Raipur

VERSUS

NON-APPLICANT Shri Chitranjan Sardar, 37 Yr. S/o Late Shri J.N. Sardar, Electrician, Bhilai Steel Plant, R/o H. No. 17-C Sec. 4, St. 31 PS Power House, Bhilai, Distt. Durg (CG)

19-12-2007

Shri Raja Sharma, Counsel for the applicant.

Shri Prateek Sharma, Advocate, for the non-applicant.

2. This petition under Section 482 of Cr.P.C. is directed against the order dated 29th January, 2005 passed in Criminal Revision No. 54/2004 at the instance of applicant Chameli Sardar and Criminal Revision No. 138/2004 at the instance of non-applicant Chitranjan Sardar whereby learned 8th Additional Sessions Judge, Raipur has dismissed both the revision vide common order dated 29th January, 2005 and upheld the order dated 15-4-2004 passed by the Judicial Magistrate First Class, Raipur allowing the application for maintenance of minor children and rejecting the application for maintenance to the present applicant-wife of the non-applicant.

3. Learned counsel for the applicant submits that the trial Court rejected the application of the wife of the non-applicant with a finding that she is residing separately of her own free will as she does not

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आदेश पत्रक (पूर्वानुबद्ध)

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want to reside with the mother of the non-applicant and the above finding has been subsequently confirmed by the learned Additional Sessions Judge who has also held that in the absence of proof of divorce of earlier marriage with his first wife Babita Sardar, the applicant cannot be conferred with the status of legally married wife. It was argued that there was no dispute before the Magistrate regarding the status of the applicant as wife as the non-applicant has admitted this fact that after divorcing his first wife, he married the applicant. This aspect has also not been disputed by the counsel representing the non-applicant/husband. It was further contended by learned counsel for the applicant that the finding of the trial Court that she is residing separately without just and sufficient cause is contrary to the evidence available on record and the same has been arrived at by ignoring the material documentary and oral evidence available on record.

4. On the other hand, learned counsel for the non-applicant submits that there is a concurrent finding of fact recorded by both the Courts below that the applicant is residing separately without just and sufficient cause of her own free will, she has not been able to establish that she was tortured by the non-applicant for dowry and no interference can be made in the concurrent finding of fact recorded by both the Courts below.

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5. I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

6. The trial Court has rejected the application of the wife for maintenance with an observation that she has failed to prove sufficient cause for separate living. The reasons for not believing the allegations of torture made by the applicant are that she did not complaint against the non-applicant to her neighbourers nor she examined any resident of Bhilai to establish the fact of torture and therefore, her testimony is not corroborated from other evidence. A.W. 2 Ajay Rao has also been disbelieved solely on the ground that Sarpanch of Mana has not been examined who could be important witness as he accompanied Ajay Rao when he went to the applicant for settling the matter and the above finding has been subsequently confirmed by the trial Court. From perusal of the statement of the applicant and her witness, it is observed that she has made serious allegations of torture and cruel behavior for demand of dowry. There is evidence available on record that she lodged a report in Mahila Police Thana and subsequently to Police Superintendent, Raipur. She also made an application for maintenance in the past, however on the promise of the non-applicant that henceforth he would keep her properly, she returned to her matrimonial home and proceedings ended into a compromise. On her report an offence under Section 498A read with Section 34 of I.P.C. has been registered against her husband and his mother which has not been disputed by the non-

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husband and his mother which has not been disputed by the non-applicant.

7. In a proceeding under Section 125 of the Code, it is not necessary for the Court to ascertain as to who was in the wrong and whether the wife was guilty of leaving the matrimonial house without any reason. Proceedings under Section 125 of the Code should not be confused with the matrimonial proceedings between the parties. A right to claim maintenance under the Code is not dependent upon who was right and who was wrong in the matrimonial disputes. The Magistrate is duty bound to award maintenance once it is found that the wife is unable to maintain herself and her husband has means but still neglects or refuses to maintain his wife. The Magistrate is not required to examine whether the conduct of the wife in initially leaving the house was just or not. The conduct of the wife at the time of leaving the house is wholly irrelevant and the Magistrate must concentrate on the facts and circumstances existing on the date of passing order on application filed under S. 125 of the Code.

8. In the instant case, from perusal of the statement of the complainant, it is clear that she was willing to discharge her conjugal obligation even during proceedings under Section 125 of the Code. Her allegations of cruel behavior and torture find support from her witness as also from the documentary evidence available on record. The reason assigned by the Magistrate for disbelieving the applicant

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आदेश पत्रक (पूर्वानुबद्ध)

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	is based on perverse appreciation of evidence available on record and the same cannot be sustained. 9. In view of the un-controverted evidence available on record that the non-applicant husband is Sr. Electrician in Bhilai Steel Plant and drawing salary at the rate of 13,000/- per month, and as the applicant-wife is not able to maintain herself, the orders passed by both the Courts below whereby the application of the applicant for maintenance has been rejected cannot be sustained and accordingly the same is set aside to that extent. The non-applicant is directed to pay Rs. 1,500/- per month to the applicant from the date of order of the trial Court. **Sd/-** **Dhirendra Mishra** **Judge**	

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